

GREGORIO PALACIO, IN HIS OWN BEHALF AND IN BEHALF OF HIS MINOR CHILD MARIO PALACIO, PLAINTIFFS AND APPELLANTS, VS. FELY TRANSPORTATION COMPANY, DEFENDANT AND APPELLEE.

G.R. No. L-15121. August 31, 1962

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal by the plaintiffs from the decision of the Court of First Instance of Manila which dismissed their complaint.

Originally taken to the Court of Appeal's, this appeal was certified to this Court on the ground that it raises purely questions of law.

The parties in this case adopt the following findings of fact of the lower court:

"In their complaint filed with this Court on May 15, 1954, plaintiffs allege, among other things, 'that about December, 1952, the defendant company hired Alfredo Carillo as driver of AC-787 (687) (a registration for 1952) owned and operated by the said defendant company; that on December 24, 1952, at about 11:30 a.m., while the driver Alfonso (Alfredo) Carillo was driving AC-687 at Halcon Street, Quezon City, wilfully, unlawfully and feloniously and in a negligent, reckless and imprudent manner, run over a child Mario Palacio of the herein plaintiff Gregorio Palacio; that on account of the aforesaid injuries Mario Palacio suffered a simple fracture of the right femur (sic), complete third, thereby hospitalizing him at the Philippine Orthopedic Hospital from December 24, 1952, up to January 8, 1953, and continued to be treated for a period of five months thereafter; that the plaintiff Gregorio Palacio herein is a welder by occupation and owner of a small welding shop and because of the injuries of his child he has abandoned his shop where he derives income of P10.00 a day for the support of his big family; that during the period that the plaintiff's (Gregorio Palacio's) child was in the hospital and when said child was under treatment for five months in order to meet the needs of his big family, he was forced to sell one air compressor (heavy duty) and one heavy duty electric drill, for a sacrifice sale of P150.00 which could easily sell at P350.00; that as a consequence of the negligent and reckless act of the driver Alfredo Carillo of the herein defendant company, the herein plaintiffs were forced to litigate this case in Court for an agreed amount of P300.00 for attorney's fee; that the herein plaintiffs have now incurred the amount of P500.00 for actual expenses for transportation, representation and similar expenses for gathering evidence and witnesses; and that because of the nature of the injuries of plaintiff Mario Palado, and the fear that the child might become a useless invalid, the herein plaintiff Gregorio Palacio has suffered moral damages which could be conservatively estimated at P1,200.00.'

"On May 23, 1956, defendant Fely Transportation Co. filed a Motion to Dismiss on the grounds (1) that there is no cause of action against the defendant company, and (2) that the cause of action is barred by prior judgment.

"In its Order, dated June 8, 1956, this Court deferred the determination of the grounds alleged in the Motion to Dismiss until the trial of this case.

"On June 20, 1956, defendant filed its answer. By way of affirmative defenses, it alleges (1) that complaint states no cause of action against defendant, and (2) that the sale and transfer of the jeep AC-687 by Isabelo Calingasan to the Fely Transportation was made on December 24, 1955, long after the driver Alfredo Carillo of said jeep had been convicted and had served his sentence in Criminal Case No. Q-1084 of the Court of First Instance of Quezon City, in which both the civil and criminal cases were simultaneously tried by agreement of the parties in said case. In the Counterclaim of the Answer, defendant alleges that in view of the filing of this complaint which is a clearly unfounded civil action merely to harass the defendant, it was compelled to engage the services of a lawyer for an agreed amount of P500.00.

"During the trial, plaintiffs presented the transcript of the stenographic notes of the trial of the case of 'People of the Philippines vs. Alfredo Carillo, Criminal Case No. Q-1084,' in the Court of First Instance of Rizal, Quezon City (Branch IV), as Exhibit 'A'.

"It appears from Exhibit 'A' that Gregorio Palacio, one of the herein plaintiffs, testified that Mario Palacio, the other plaintiff, is his son; that as a result of the reckless driving of accused Alfredo Carillo, his child Mario was injured and hospitalized from December 24, 1952, to January 8, 1953; that during all the time that his child was in the hospital, he watched him during the night and his wife during the day; that during that period of time he could not work as he slept during the day; that before his child was injured, he used to earn P10.00 a day on ordinary days and on Sundays from P20 to P50 a Sunday; that to meet his expenses he had to sell his compressor and electric drill for P150 only; and that they could have been sold for P300 at the lowest price.

"During the trial of the criminal case against the driver of the jeep in the Court of First Instance of Quezon City (Criminal Case No. Q-1084), an attempt was unsuccessfully made by the prosecution to prove moral damages allegedly suffered by herein plaintiff Gregorio Palacio. Likewise an attempt was made in vain by the private prosecutor in that case to prove the agreed attorney's fees between him and plaintiff Gregorio Palacio and the expenses allegedly incurred by the herein plaintiffs in connection with that case. During the trial of this case, plaintiff Gregorio Palacio testified substantially to the same facts.

"The Court of First Instance of Quezon City in its decision in Criminal Case No. 1084 (Exhibit '2') determined and thoroughly discussed the civil liability of the accused in that case. The dispositive part thereof reads as follows:

"In view of the foregoing, the Court finds the accused Alfredo Carillo y Damaso guilty beyond reasonable doubt of the crime charged in the information and he is hereby sentenced to suffer imprisonment for a period of Two Months & One Day of Arresto Mayor; to indemnify the offended party, by way of consequential damages, in the sum of P500.00 which the Court, deems reasonable; with subsidiary imprisonment in case of insolvency but not to exceed 1/3 of the principal penalty imposed; and to pay the costs.' "

On the basis of these facts, the lower court held that the action is barred by the judgment in the criminal case and that under Article 103 of the Revised Penal Code, the person subsidiarily liable to pay damages is Isabelo Calingasan, the employer, and not the defendant corporation.

Against that decision, the plaintiffs appealed, contending that:

"The lower court erred in not sustaining that the defendant-appellee is subsidiary liable for damages as a result of criminal case No. Q-1084 of the court of First Instance of Quezon City for the reason that the incorporators of the Fely Transportation Company, the defendant-appellee herein, are Isabelo Calingasan himself, his son and daughters;

"The lower court erred in not considering that the intention of Isabelo Calingasan in Incorporating the Fely Transportation Company, the defendant-appellee herein, was to evade his civil liability as a result of the conviction of his driver of Vehicle AC-687 then owned by him;

"The lower court erred in holding that the cause of action of the plaintiff-appellants is barred by prior judgment."

With respect to the first and second assignments of errors, plaintiffs contend that the defendant corporation should be made subsidiarily liable for damages in the criminal case because the sale to it of the jeep in question, after the conviction of Alfredo Carillo in Criminal Case No. Q-1084 of the Court of First Instance of Quezon City, was merely an attempt on the part of Isabelo Calingasan, its president and general manager, to evade his subsidiary civil liability.

The Court agrees with this contention of the plaintiffs. Isabelo Calingasan and defendant Fely Transportation may be regarded as one and the same person. It is evident that Isabelo Calingasan's main purpose in forming the corporation was to evade his subsidiary civil liability^[1] resulting from the conviction of his driver, Alfredo Carillo.

This conclusion is borne out by the fact that the incorporators of the Fely Transportation are Isabelo Calingasan, his wife, his son, Dr. Calingasan, and his two daughters. We believe that this is one case where the defendant corporation should not be heard to say that it has a personality separate and distinct from its members when to allow it to do so would be to sanction the use of the fiction of corporate entity as a shield to further an end subversive of justice. (*La Campana Coffee Factory, et al. vs. Kaisahan ng mga Manggagawa, etc., et al.*, 93 Phil., 160.) Furthermore, the failure of the defendant corporation to prove that it has other property than the jeep (AC-687) strengthens the conviction that its formation was for the purpose above indicated.

And while it is true that Isabelo Calingasan is not a party in this case, yet, as held in the case of *Alonso vs. Villamor*, 16 Phil. 315, this Court can even substitute him in place of the defendant corporation as to the real party in interest. This is so in order to avoid multiplicity of suits and thereby save the parties unnecessary expenses and delay. (Sec. 2, Rule 17, Rules of Court; *Cuyugan vs. Dizon*, 79 Phil., 80; *Quison vs. Salud*, 12 Phil., 109).

Accordingly, defendants Fely Transportation and Isabelo Calingasan should be held subsidiarily liable for P500.00 which Alfredo Carillo was ordered to pay in the criminal case and which amount he could not pay on account of insolvency.

We also sustain plaintiffs' third assignment of error and hold that the present action is not barred by the judgment of the Court of First Instance of Quezon City in the criminal case. While there seems to be some confusion on the part of the plaintiffs as to the theory on which the case is based—whether *ex-delito* or *quasi ex-delito* (*culpa aquiliana*)—We are convinced, from the discussion and prayer in the brief on appeal, that they are insisting on the subsidiary civil liability of the defendant. As a matter of fact, the record shows that plaintiffs merely presented the transcript of the stenographic notes (Exhibit "A") taken at the hearing of the criminal case, which Gregorio Palacio corroborated, in support of their claim for damages. This rules out the defense of *res judicata*, because such liability proceeds precisely from the judgment in the criminal action, where the accused was found guilty and ordered to pay an indemnity in the; sum of P500.00.

Wherefore, the decision of the lower court is hereby reversed and defendants Fely Transportation and Isabelo Calingasan are ordered to pay, jointly and severally, the plaintiffs the amount of P500.00 and the costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

[1] Article 103 of the Revised Penal Code states that 'the subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for

felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties."

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